

85-00479

# OFFICE OF THE ATTORNEY GENERAL



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ATTORNEY GENERAL  
STATE OF ALABAMA

AUG 20 1985

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Honorable Taylor Harper  
House of Representatives  
State Capitol  
Montgomery, AL 36130

Mobile County - Solid Waste  
Disposal - Officers and  
Offices

Pursuant to Act 84-819, all  
members of the Mobile County  
Solid Waste Management Advisory  
Board appointed after May 7,  
1984 must be residents of  
unincorporated areas of Mobile  
County.

Election or appointment of a  
person not qualified to hold  
office is void.

Dear Representative Harper:

We are in receipt of your request dated June 10, 1985,  
relating to Act 81-450 in which you seek an opinion  
addressing the following questions:

"1. Since the title of said act  
relates to a solid waste management  
program in the unincorporated area of  
Mobile County, should all appointments  
to the Solid Waste Management Advisory  
Board pursuant to Section III,  
Subsection (1) reside in the  
unincorporated areas of Mobile County?

2. If any appointments have been  
made to persons who reside in an  
incorporated area of Mobile County,  
should such persons be removed by the  
board and replaced with persons who

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reside in unincorporated areas of Mobile County?"

With regard to your first question, Act 81-450 was amended in 1984, by Act 84-819. Section 1 of Act 84-819 is set out in part below:

Section 1. Section III of Act No. 81-450, H. 825, of the 1981 Regular Session (Acts 1981, p. 773) is hereby amended to read as follows:

"SECTION III. SOLID WASTE MANAGEMENT ADVISORY BOARD.

1. APPOINTMENT: There is hereby created a Solid Waste Management Advisory Board consisting of eleven (11) members: one shall be a member of the County Commission of Mobile County, Alabama, one shall be the Solid Waste Coordinator, two shall be appointed by the Senators of the Mobile County Legislative Delegation, two shall be appointed by the Representatives of the Mobile County Legislative Delegation, one at large shall be appointed by all other appointees, one shall be appointed by the Sheriff of Mobile County, one shall be appointed by the County Commissioner of District 1, one shall be appointed by the County Commissioner of District 2, and one shall be appointed by the County Commissioner of District 3. All members shall reside in the unincorporated area of Mobile County.

A complete copy of Act 84-819 is attached.

The language of Act 84-819 is clear. All members of the Solid Waste Management Advisory Board shall reside in the unincorporated area of Mobile County.

Section 2 of Act 84-819 also states that the provisions of this Act shall have retroactive effect to any term beginning after May 7, 1984.

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Based upon Section 2, it is the opinion of this office, that any Advisory Board term which began after May 7, 1984 should have been filled by a resident of an unincorporated area of Mobile County.

With regard to your second question, it is accepted law that the legislature, subject to such limitations as may be imposed by the constitution, has the power to fix the qualifications or disqualifications for public office or employment. 67 C.J.S. 16. See also Akers v. State ex rel Witcher, 215 So. 2d 578, 283 Ala. 248 (1968).

Residence may be a qualification for public office or employment under various constitutional or statutory provisions and the validity of such a requirement has been generally upheld. Compliance with such provisions is mandatory. 67 C.J.S. §26.

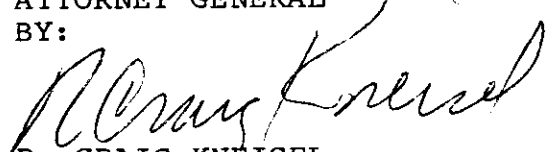
It is generally accepted that when the legislature has fixed qualifications for an office pursuant to its authority to do so, electors may not select one not possessing the qualifications prescribed and further that the appointment of an ineligible person is an absolute nullity and cannot be validated either by ratification or recognition. 67 C.J.S. §19.

Consequently, it is our opinion that any appointment of ineligible persons to the Mobile County Solid Waste Management Advisory Board would be void.

We hope that we have sufficiently addressed your questions and if we may be of further assistance, please do not hesitate to contact us.

Sincerely,

CHARLES A. GRADDICK  
ATTORNEY GENERAL  
BY:

  
R. CRAIG KNEISEL  
ASSISTANT ATTORNEY GENERAL

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*re of Alabama:*

Act No. 951, H. 2010, 1973 Regular hereby amended to read as follows:

registrars of Madison County shall for the purpose of registering voters ith, and may also meet an additional lays in each calendar year any place t."

become effective immediately upon Governor, or upon its otherwise be-

H. 41—Rep. White (L)

#### AN ACT

ending Section 2 of Act No. 32, S. 62, Regular ig to compensation for members of the board said supplement, and to provide for mileage; ealing Act No. 80-681, H. 1125, Regular Ses- . 80-784, S. 606, Regular Session 1980 (Acts 2nd Special Session 1978 (Acts 1978, p. 1827),

*re of Alabama:*

Act No. 32, S. 62, Regular Session eby amended to read as follows:

of the board of registrars of Talla- / dollars (\$40) per day to be paid by probate judge for each day's attend- sessions of the board. The per diem le from the general fund of Talla- addition to the compensation pre- neral law."

a County, the members of the Board to receive a mileage allowance of 20 Dadeville County Courthouse for at- of the board. The mileage allowance be in addition to any and all other ances provided for by law and shall ral fund.

**Section 3.** The operation of this act shall be retroactive to January 1, 1984, and all actions taken and payments made pursuant thereto on and after that date are ratified and confirmed.

**Section 4.** Act No. 80-681, H. 1125, Regular Session 1980 (Acts 1980, p. 1367), Act No. 80-784, S. 606, Regular Session 1980 (Acts 1980, p. 1681), and Act No. 111, H. 86, Second Special Session 1978 (Acts 1978, p. 1827), are hereby specifically repealed.

**Section 5.** This act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

Approved June 14, 1984

Time: 4:00 P.M.

Act No. 84-819

H. 108—Rep. Harper

#### AN ACT

Relating to the Mobile County Solid Waste Management Program and the residence, appointment and number of the Solid Waste Management Advisory Board; amending Section III of Act No. 81-450, H. 825, of the 1981 Regular Session (Acts 1981, p. 773) therefor; making the provisions retroactive to any term effective after May 7, 1984.

*Be It Enacted by the Legislature of Alabama:*

**Section 1.** Section III of Act No. 81-450, H. 825, of the 1981 Regular Session (Acts 1981, p. 773) is hereby amended to read as follows:

"SECTION III. SOLID WASTE MANAGEMENT ADVISORY BOARD.

"1. **APPOINTMENT:** There is hereby created a Solid Waste Management Advisory Board consisting of eleven (11) members: one shall be a member of the County Commission of Mobile County, Alabama, one shall be the Solid Waste Coordinator, two shall be appointed by the Senators of the Mobile County Legislative Delegation, two shall be appointed by the Representatives of the Mobile County Legislative Delegation, one at large shall be appointed by all other appointees, one shall be appointed by the Sheriff of Mobile County, one shall be appointed by the County Commissioner of District 1, one shall be appointed by the County Commissioner of District 2, and one shall be appointed by the County Commissioner of District 3. All members shall reside in the unincorporated area of Mobile County.

"2. **TERMS:** The Solid Waste Management Advisory Board

members shall serve for a term of four (4) years; provided, however, in the initial term the member from the County Commission shall serve for four (4) years; the Director or his duly appointed designee shall be a permanent member of the Advisory Board, and the remaining members appointed shall serve for a period of two (2) years.

"3. APPOINTED MEMBERS: Appointed members of the Advisory Board shall serve at the pleasure of the Board and may be removed by a majority vote of the Board.

"4. ORGANIZATION—MEETINGS: The Advisory Board shall, within thirty (30) days after its full appointment, hold a meeting at which it shall elect its officers and adopt bylaws governing the conduct of its business. The Board shall meet not less than one (1) time in each quarter year. The Chairperson, the Mobile County Commission, or a quorum of the Advisory Board may call an emergency meeting at any time.

"5. DUTIES: The Advisory Board:

"A. May review permit application forms and recommend revisions thereof, which shall be consistent with the terms of this bill.

"B. May make recommendations for the revision of this bill.

"C. Shall make recommendations to the Mobile County Commission for establishing or altering rates, charges, or fees required by the bill. It may make such recommendations to the Director as are authorized by its bylaws.

"D. May attend any hearings held by the Director regarding complaints arising from the administration of this bill. The Advisory Board may make recommendations to the Director which, in its opinion, would alleviate the cause of such complaints. In all such hearings, the Advisory Board shall participate through the Director only and all recommendations shall be in writing."

Section 2. The provisions of this act shall have retroactive effect to any term beginning after May 7, 1984.

Approved June 14, 1984

Time: 4:00 P.M.

Act No. 84-820

H. 128—Rep. Thomas

# AN ACT

Relating to Lowndes County; providing for a chief clerk and clerk for the probate judge; prescribing the duties and setting the salaries for such clerks; and repealing